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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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HOVEY WILLIAMS LLP 2405 GRAND BLVD., SUITE 400 KANSAS CITY, MO 64108			EXAMINER HALE, ADAM G	
			ART UNIT	PAPER NUMBER
			4175	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/672,212

Applicant(s)

SMITH ET AL.

Examiner

Adam G. Hale

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date 4/30/2004.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1 – 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 2 recites the limitation "the one or more data processing and storage servers" in the second line of claim 2. There is insufficient antecedent basis for this limitation in the claim.

4. Claim 4 recites the limitation "the one or more data processing and storage servers" in the second line of claim 4. There is insufficient antecedent basis for this limitation in the claim.

5. Claim 5 recites the limitation "the one or more data processing and storage servers" in the second line of claim 5. There is insufficient antecedent basis for this limitation in the claim.

6. The term "substantially" in claims 1 - 5 is a relative term that renders the claims indefinite. The term "substantially" is not defined by the respective claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Is the method of claims 1 – 5 carried out automatically, or is there a manual step involved?

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1 – 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Wyatt US 6490530.

9. **With respect to claim 1**, Wyatt discloses a method of evaluating a threat posed by substance (reference provides an aerosol hazard classification and early warning network, see abstract), the method comprising the steps of:

deploying a plurality of remote sensing units and a control unit adapted to substantially automatically identify the substance and to provide a corresponding report (detector stations capable of measuring and classifying aerosol particles, col. 8 lines 34 – 44);

uploading the report to a remote server (detector stations capable of measuring and classifying aerosol particles, and reporting all processed data via integrated telecommunications to a central control station, col. 8 lines 29 – 45);

establishing a hierarchy of threat evaluators, including a plurality of experts having knowledge relevant to making a high-level threat assessment (interpreted to be

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the sending of threat analyses to various civil, police, emergency and other agencies responsible for population health and safety throughout and surrounding the monitored region, col. 13 line 65 – col. 14 line 3); and

allowing the hierarchy of threat evaluators to access the report on the remote server via a wide area network (interpreted to be the access of various respective threat analyses by civil, police, emergency and other agencies responsible for population health and safety throughout and surrounding the monitored region through telemetry means, col. 13 line 65 – col. 14 line 3).

10. **With respect to claim 2**, Wyatt discloses a method of evaluating a threat posed by a substance, further including the steps of providing the one or more data processing and storage servers with evaluation tools for substantially automatically evaluating the report in light of other relevant data (interpreted to be the evaluation of the threat posed by and likely movement of the aerosol cloud by the central station, integrated with meteorological data, col. 13 lines 41 – 43, 51 – 54 and 60 – 63).

11. **With respect to claim 3**, Wyatt discloses a method of evaluating a threat posed by substance (reference provides an aerosol hazard classification and early warning network, see abstract), the method comprising the steps of:

deploying a plurality of remote sensing units and a control unit adapted to substantially automatically identify the substance and to provide a corresponding report (detector stations capable of measuring and classifying aerosol particles, col. 8 lines 34 – 44);

uploading the report to a remote server (detector stations capable of measuring

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and classifying aerosol particles, and reporting all processed data via integrated telecommunications to a central control station, col. 8 lines 29 – 45);

identifying an appropriate local reporting authority and an appropriate local reporting policy based upon an actual geographic location of the substance (interpreted to be inherently disclosed as the reference teaches the reporting of threat analyses to various civil, police, emergency and other agencies responsible for population health and safety throughout and surrounding the monitored region, col. 13 line 65 – col. 14 line 3);

notifying the appropriate local reporting authority of the report in accord with the appropriate local reporting policy (threat analyses are sent to various civil, police and emergency agencies, col. 13 lines 65 – col. 14 line 3);

establishing a hierarchy of threat evaluators, including a plurality of experts having knowledge relevant to making a high-level threat assessment (interpreted to be the sending of threat analyses to various civil, police, emergency and other agencies responsible for population health and safety throughout and surrounding the monitored region, col. 13 line 65 – col. 14 line 3); and

allowing the hierarchy of threat evaluators to access the report on the remote server via a wide area network (interpreted to be the access of various respective threat analyses by civil, police, emergency and other agencies responsible for population health and safety throughout and surrounding the monitored region through telemetry means, col. 13 line 65 – col. 14 line 3).

12. **With respect to claim 4**, Wyatt discloses a method of evaluating a threat posed by a substance, further including the steps of providing the one or more data processing and storage servers with evaluation tools for substantially automatically evaluating the report in light of other relevant data (interpreted to be the evaluation of the threat posed by and likely movement of the aerosol cloud by the central station, integrated with meteorological data, col. 13 lines 41 – 43, 51 – 54 and 60 – 63).

13. **With respect to claim 5**, Wyatt discloses a method of evaluating a threat posed by substance (reference provides an aerosol hazard classification and early warning network, see abstract), the method comprising the steps of:

deploying a plurality of remote sensing units and a control unit adapted to substantially automatically identify the substance and to provide a corresponding report (detector stations capable of measuring and classifying aerosol particles, col. 8 lines 34 – 44);

uploading the report to a remote server (detector stations capable of measuring and classifying aerosol particles, and reporting all processed data via integrated telecommunications to a central control station, col. 8 lines 29 – 45);

providing the one or more data processing and storage servers with evaluation tools for substantially automatically evaluating the report in light of other relevant data (interpreted to be the evaluation of the threat posed by and likely movement of the aerosol cloud by the central station, integrated with meteorological data, col. 13 lines 41 – 43, 51 – 54 and 60 – 63); and

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allowing access to the report stored on the remote server via a wide area network (interpreted to be the access of various respective threat analyses by civil, police, emergency and other agencies responsible for population health and safety throughout and surrounding the monitored region through telemetry means, col. 13 line 65 – col. 14 line 3).

### ***Claim Rejections - 35 USC § 103***

14. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

15. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).



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16. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wyatt in view of 42 USC 11023 (a) (enacted October 17, 1986).

17. **With respect to claim 3**, Wyatt discloses a method of evaluating a threat posed by substance (reference provides an aerosol hazard classification and early warning network, see abstract), the method comprising the steps of:  
deploying a plurality of remote sensing units and a control unit adapted to substantially automatically identify the substance and to provide a corresponding report (detector stations capable of measuring and classifying aerosol particles, col. 8 lines 34 – 44);  
uploading the report to a remote server (detector stations capable of measuring and classifying aerosol particles, and reporting all processed data via integrated telecommunications to a central control station, col. 8 lines 29 – 45);  
establishing a hierarchy of threat evaluators, including a plurality of experts having knowledge relevant to making a high-level threat assessment (interpreted to be the sending of threat analyses to various civil, police, emergency and other agencies responsible for population health and safety throughout and surrounding the monitored region, col. 13 line 65 – col. 14 line 3); and  
allowing the hierarchy of threat evaluators to access the report on the remote server via a wide area network (interpreted to be the access of various respective threat analyses by civil, police, emergency and other agencies responsible for population health and safety throughout and surrounding the monitored region through telemetry means, col. 13 line 65 – col. 14 line 3).

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18. In the event that Wyatt may be determined to not disclose the remaining limitations of claim 3, 42 USC 11023(a) does disclose the remaining limitations of claim 3.

19. 42 USC 11023 (a) requires that the operator of a facility subject to the requirements of the section complete and submit a toxic chemical release form to the EPA Administrator and to an official or officials of the State designated by the Governor of the respective state. 42 USC 11023 (a) is therefore interpreted to provide a method of identifying an appropriate local reporting authority (the State in which the toxic chemical was released) and an appropriate local reporting policy based upon an actual geographic location of the substance (the Governor of the State in which the toxic chemical was released designates official(s) for the report to be submitted to, i.e. a local reporting policy). 42 USC 11023 (a) is also interpreted to provide a method for notifying the appropriate local reporting authority of the report in accordance with appropriate local reporting policy (a report must be submitted to an officials designated by the Governor of the State).

20. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine the method of Wyatt with local reporting and associated policies based on geographic locations required by 42 USC 11023(a) in order to provide a more efficient and useful method of evaluating a threat posed by a substance.

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21. **With respect to claim 4**, Wyatt discloses a method of evaluating a threat posed by a substance, further including the steps of providing the one or more data processing and storage servers with evaluation tools for substantially automatically evaluating the report in light of other relevant data (interpreted to be the evaluation of the threat posed by and likely movement of the aerosol cloud by the central station, integrated with meteorological data, col. 13 lines 41 – 43, 51 – 54 and 60 – 63).

***Conclusion***

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Dungan US 6252510 provides a method of monitoring the presence of toxic gases in the atmosphere and notification of conditions to a central reporting facility.

Missouri Dept. of Natural Resources Toxic Release Inventory website is provided as an exemplar of a local reporting policy as required by 42 USC 11023(a).

"What is the Toxics Release Inventory (TRI) Program" is provided as an overview of the Emergency Planning and Community Right-to-Know Act, which includes 42 USC 11023(a) as one part.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam G. Hale whose telephone number is 571-270-3509. The examiner can normally be reached on Monday through Thursday 7:30 - 6:00 Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrence Till can be reached on 571-272-1280. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AGH

10/10/07

  
Terrence R. Till

Supervisory Patent Examiner